

OEA/Ser.L/V/II.
Doc. 6
31 January 2019
Original: Spanish

REPORT No. 6/19
PETITION 732-08
REPORT ON ADMISSIBILITY

BLANCA ESTELA QUEZADA ROJAS
MEXICO

Approved electronically by the Commission on January 31, 2019.

Cite as: IACHR, Report 6/19. Petition 732-08. Admissibility. Blanca Estela Quezada Rojas.
Mexico. January 31, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Blanca Estela Quezada Rojas and Gerardo Flores Safa
Alleged victim:	Blanca Estela Quezada Rojas
Respondent State:	Mexico ¹
Rights invoked:	Articles 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	June 24, 2008
Additional information received at the stage of initial review:	October 14 and December 19, 2008; March 10, 2009
Notification of the petition to the State:	March 16, 2016
State's first response:	June 16, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of ratification instrument on March 24, 1981)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (fair trial), 23 (participation in government) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exception in Article 46.2.a of the ACHR applicable
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. Ms. Blanca Estela Quezada Rojas (hereinafter “the alleged victim”) reports that in the proceeding for administrative responsibility filed against her—as a result of which she was removed from office as a judicial secretary—she lacked the opportunity to be heard by a competent, independent and objective tribunal and a judicial remedy to challenge the decision. She alleges that the judges furthering the lawsuit on grounds of administrative responsibility also examined the merits of the case; that therefore they were a judge and party to the matter, infringing domestic rules and the principle of due process.

¹ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not partake in the discussion or the decision on this matter.

² Hereinafter “Convention” or “American Convention.”

³ The observations submitted by each party were duly transmitted to the opposing party.

2. The alleged victim was a public official at the Federal Judiciary from May 16, 1987 to May 5, 2005. When her removal was decided, she was the secretary of the Unit on Compilation and Systematization of Theses of the Second Collegiate Criminal and Administrative Court for the Fifteenth Circuit. She claims that between December 2003 and October 2004 she was subjected to unfair and degrading treatment as well as harassment and psychological violence in the workplace, including lack of access to basic working tools such as the court's office network and printer, among others.⁴

3. She submits that on October 18, 2004 a lawsuit for administrative responsibility (2/2004) was filed against her on the ground set forth in article 131, paragraph III, of the Organic Law of the Federal Judiciary (Law of the "OPJF"), under which public officials will be held administratively responsible when they display remarkable ineptitude or negligence in the performance of functions and duties assigned to them, and on the ground set forth in article 8, paragraph I, of the Federal Law on Administrative Responsibility of Public Servants (Law on "FRASP"), according to which all public servants must fulfill those duties assigned to them and refrain from any act or omission that might affect or impair the realization of those duties or lead to abuse or improper performance of a job or duty. The proceeding was furthered by Justices Olivia Heiras de Mancidor and Ángel Gregorio Vázquez González, the alleged victim's immediate superiors.

4. The alleged victim argues that the action for administrative responsibility filed against her was unlawful because it was unfounded, in that according to article 3, paragraph II, of the Law on FRASP only the Supreme Court of Justice and the Council of the Judiciary are entitled to apply said law. As a result, she filed an objection to the abovementioned justices, and on January 26, 2005 the President of the Second Collegiate Criminal and Administrative Court for the Seventeenth Circuit dismissed it. She asserts that the court rejected the remedy on considering that the impugned proceeding was a disciplinary administrative action aimed at establishing a public servant's responsibility, that this court lacked competence to hear the case, and that its rejection did not involve an analysis of the matter. The Second Collegiate Criminal and Administrative Court for the Seventeenth Circuit, by a resolution of April 29, 2005, ordered the petitioner's removal from office and disqualified her from holding public office for a year.

5. The alleged victim presented several remedies. She filed an indirect amparo proceeding on May 27, 2005 before the District Second Court of Chihuahua State. It was dismissed on May 31, 2005 on the grounds of article 73, paragraph XVIII, of the Law of Amparo, according to which the amparo proceeding is inadmissible against resolutions from the Judiciary in which administrative responsibility is attributed to judicial employees, for it is the Council of the Federal Judiciary ("CJF") that settles these disputes after the Single Trial Commission ("CSU") has ruled.

6. In addition, the alleged victim indicates that she lodged an appeal for review on June 15, 2005 before the First Collegiate Criminal and Administrative Court for the Seventeenth Circuit, which was ruled inadmissible on August 19, 2005. In its judgment, the Court maintains that regardless of the nature of an action for administrative responsibility, a resolution has essentially labor effects, that consequently it is the CSU that must examine the matter, even more so because the law establishes that the CSU is the administrative body in charge of settling disputes between the Judiciary and its employees and because neither the Law of OPJF nor Law on FRASP foresees another mechanism for the defense to challenge a resolution to dismiss a public employee.

7. On July 8, 2005 the alleged victim presented an administrative complaint before the Federal Fiscal and Administrative Court. This Court dismissed it on considering that the CJF is the competent body to examine the case after the CSU has ruled. Likewise, on September 5, 2005 Ms. Blanca Estela Quezada Rojas filed a labor complaint to the CSU of the Federal Judiciary seeking to challenge the resolution issued in the suit for administrative responsibility. The petitioner claimed the competence of the CSU to examine her labor complaint, substantiate the proceeding, adjudicate, and forward the matter to the Plenary of the

⁴ The petitioning party has not submitted claims or details on the alleged victim's labor conditions or the purported harassment.

Council of the Federal Judiciary. On September 20, 2005 the CSU adjudged the complaint inadmissible on considering that it could not examine a labor dispute inasmuch as the proceeding in which she was removed was an administrative action and not a labor proceeding.

8. On October 13, 2005 the petitioner lodged a direct amparo action against the CSU decision of September 20, 2005 before the Eleventh Collegiate Labor Court for the First Circuit. On November 29, 2005 this Court granted the appeal and federal judicial protection in favor of the petitioner so that the CSU would annul the impugned decision and issue a resolution admitting her complaint pursuant to the Labor Court's decision.

9. On December 8, 2005 the CSU voided its decision of September 20, 2005 and admitted the petitioner's labor complaint against the Second Collegiate Criminal and Administrative Court for the Seventeenth Circuit. On April 25, 2007 the CSU ruled to admit the exception of inadmissibility of action filed by the defendant. The defendant argued that under the Legislative Reform of 1994 district judges were entitled to institute and settle administrative proceedings in connection with their employees. This decision settled the proceeding without allowing the petitioner to present her case and exercise her right of defense. On May 2, 2007 the Plenary of the CJF upheld the decision and found the remedy inadmissible on the same grounds.

10. The alleged victim submits that given that the amparo action against her dismissal and disqualification was rejected mainly because of the alleged CJF competence to hear and decide on that resolution after the CSU of the Federal Judiciary had ruled, and that this is impossible in practice, the aforementioned defense remedies are non-existent, for they proved ineffective to challenge the resolution issued in the proceeding for administrative responsibility lodged against her.

11. The State does not question the petitioners' claims on the action for administrative responsibility that led to the alleged victim's removal from office and disqualification. It requests that the petition be found inadmissible on grounds of untimeliness. It pleads that the suit furthered by the petitioner to report the violations raised in the instant petition to the Commission was settled on May 2, 2007 and that the instant petition was filed to the Commission on June 24, 2008, that is, more than a year later.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. In relation to the requirement of prior exhaustion of domestic remedies, the parties agree that by the resolution of April 29, 2005 a disciplinary sanction was imposed on the petitioner and that on May 27, 2005 the alleged victim presented an amparo action, which was dismissed because disputes between the Judiciary and its employees must be settled by the CJF after the CSU has ruled. On May 2, 2007 the Plenary of the CJF found the alleged victim's labor complaint inadmissible in view of the disciplinary administrative nature of the proceeding leading to her removal from office and disqualification. In view of the foregoing and considering that the State has failed to indicate what remedies are effective to challenge the disciplinary sanction imposed on the alleged victim, the Commission finds the exception set forth in Article 46.2.a of the Convention applicable.

13. As for the requirement of timeliness, the State contends that the petition was filed after the six months' period following the notification of the decision of the Plenary of the CJF. In that regard, under Article 32.2 of the IACHR Rules of Procedure, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the six months' period does not apply but the petition shall be presented within a reasonable period. In any case, it is worth to note that the alleged victim filed her petition within six months following the notification of the resolution on administrative remedy no. 7/2007 of December 10, 2007, through which the petitioner filed amparo action no. 234/2005 before the administrative review court. That was the last of the special remedies she presented. The Commission believes that the petition was filed in a timely manner.

VII. ANALYSIS OF COLORABLE CLAIM

14. In view of the factual and legal elements submitted by the petitioning party and considering the nature of the matter brought to its attention, the IACHR considers that the purported violations of her right of defense and the principle of due process, the lack of effective remedies to protect her rights in view of her dismissal and disqualification, if proven, all could tend to establish violations of Articles 8, 23 and 25, in relation to Article 1.1, of the American Convention to the detriment of Ms. Blanca Estela Quezada Rojas. The Commission will analyze in the report on the merits whether the alleged lack of legal provisions providing for an effective remedy against that sanction could establish a violation of Article 2 of the same treaty.

15. With respect to the claim on the purported violation of Article 24 (equal protection) of the American Convention, the Commission observes that the petitioning party has not submitted arguments or enough evidence to consider, *prima facie*, said violation.

VIII. DECISION

1. To find the instant petition admissible in connection with Articles 8, 23 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof;

2. To find the instant petition inadmissible in connection with Article 24 of the American Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31st day of the month of January, 2019. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Antonia Urrejola, and Flávia Piovesan, Commissioners.